

Science Advisory Board – Overview Information

Questions from House Science Committee

1. *What was the consideration process with respect to the SAB Staff Office? Were membership grids prepared? Did Tom Brennan or others brief Administrator Wheeler on the Staff Office? We request to see any written documentation of the consideration process.*

RESPONSE: The EPA relies on independent, expert advice from a variety of Federal Advisory Committees (FACs) to help inform sound decision-making and fulfill its core mission of protecting human health and the environment. Independent experts provide advice to the Administrator on a broad array of subjects, including pesticides, drinking water quality, air quality, research methods, modeling, research needs considering welfare and children's health.

The process for selecting members for the Science Advisory Board (SAB or “the Board”) is described in the *Implementation Plan for the New Structural Organization of the EPA Science Advisory Board (SAB): A Report of the EPA Science Advisory Board Staff Office (EPA-SAB-04-002)*. The SAB Staff Office reviews qualifications of nominees to assess whether they have the scientific education, training, and experience to evaluate basic and applied science issues addressed by the advisory committees. The SAB Staff Office looks for nominees who have distinguished themselves professionally and who will be available to invest the time and effort in providing advice and recommendations to the EPA.

The SAB solicitation process for nominations to the SAB and its four subcommittees began on April 1, 2020, with a *Federal Register* Notice announcing the SAB was inviting nominations of experts to be considered by the Administrator for appointment to the SAB and its four standing subcommittees. The nomination period was extended in another *Federal Register* Notice published on August 14, 2020. The nomination period closed on August 31, 2020. The SAB Staff Office identified 72 candidates who confirmed interest to serve on the Board and an additional 63 candidates with confirmed interest to serve on the four SAB subcommittees. Each of the candidates submitted bio-sketches and *curricula vitae*. The List of Candidates was posted on the SAB website for a 21-day public comment period that closed on October 5, 2020. SAB Staff Office Director Thomas Brennan and others briefed the Administrator and he approved the list of candidates on October 9, 2020. On October 14, 2020, Administrator Wheeler announced the selection of Dr. John Graham as the new SAB Chair and Dr. Barbara Beck as SAB Vice-Chair. The Administrator also announced the appointment of 16 new members who will serve on the SAB and four subcommittees including; the Agricultural Science Committee (ASC), the Chemical Assessment Advisory Committee (CAAC), the Drinking Water Committee (DWC), and the Radiation Advisory Committee (RAC). The new members of the SAB were selected by the Administrator from the List of Candidates and supporting materials, including bio-sketches and *curricula vitae* of the nominees.

This Administration has placed an emphasis on balancing the committees, and while the Chartered SAB and standing committees remain unbalanced with an overwhelming majority of members having academic affiliations, the Chartered SAB and standing committees are more balanced now than they have been in years prior. As shown in the charts below, there can be no argument that the SAB is better balanced now than it was 4 years ago.

Chartered SAB (1/11/2021)						
	Academic	Consultant	Industry	NGO	State/Gov	Total
Totals	22	9	4	4	4	43
Percentage	51%	21%	9%	9%	9%	100%
SAB Agricultural Committee (ASC) (1/11/2021)						
Totals	15	0	2	2	3	22
Percentage	68%	0%	9%	9%	14%	100%
SAB Chemical Assessment Advisory Committee (CAAC) (1/11/2021)						
Totals	13	6	1	0	1	21
Percentage	62%	29%	5%	0%	5%	100%
SAB Drinking Water Committee (DWC) (1/11/2021)						
Totals	6	3	0	2	2	13
Percentage	46%	23%	0%	15%	15%	100%
SAB Radiologic Advisory Committee (RAC) (1/11/2021)						
Totals	4	6	0	0	2	12
Percentage	33%	50%	0%	0%	17%	100%

Chartered SAB (1/19/2017) ¹							
	Academic	Consultant	Industry	NGO	State/Gov	Other	Total
Totals	36	0	3	5	2	1	47
Percentage	77%	0%	6%	11%	4%	2%	100%

2. Did the EPA Ethics Office review the nominees for potential conflicts of interest?

RESPONSE: SAB members serve as Special Government Employees (SGEs). SGEs are subject to federal ethics laws and regulations, including those relating to conflicts of interest or the appearance of a loss of impartiality. For example, FAC members are prohibited by law from participating personally and substantially in any particular matter that has a direct and predictable effect on their own financial interests, or on the financial interests of others whose interests are imputed to them (18 U.S.C. § 208).

¹ As calculated by the GAO's July 2019 report "EPA Advisory Committees: Improvements Needed for the Member Appointment Process"

The SAB Staff Office follows a structured process for evaluating independence, financial conflicts of interest and appearance of a loss of impartiality, and objectivity of candidates to participate in SAB advisory activities. The Alternate Designated Ethics Official (ADEO) reviews the nominees for potential conflicts of interest. If questions arise, the ADEO contacts the Designated Ethics Officer (DEO).

Prior to any specific project by the chartered SAB or SAB standing committees, the SAB Staff Office obtains and reviews ethics information using a confidential disclosure form (EPA Form 3110-48, Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees) to establish that the member does not have any financial conflicts of interest or even an appearance of a loss of impartiality. If a candidate to serve on an SAB/CASAC panel is a regular government employee at another federal agency, ethics information is obtained using the OGE Form 450 or OGE Form 278e, as appropriate.

3. *Did all appointees submit financial disclosure forms?*

RESPONSE: Yes, EPA collects EPA Form 3110-48, Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees, from each appointee. Members of Federal Advisory Committees, including the SAB, generally serve as Special Government Employees (SGEs)—some are non-EPA federal government employees—and serve as Regular Government Employees (RGEs).

4. *Has the SAB Staff Office prepared a list of potential conflicts for reference for upcoming SAB projects?*

RESPONSE: SGEs and RGEs are subject to federal ethics laws and regulations, including those relating to conflicts of interest or the appearance of a loss of impartiality. Prior to any specific project by the chartered SAB or SAB standing committees, the SAB Staff Office obtains and reviews ethics information using a confidential disclosure form (EPA Form 3110-48, Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees). This form requests information from candidates regarding their (and their spouse's) employment or consulting work, compensated expert testimony, sources of research funding in the previous two years (including grants and contracts), and investment assets (including for their spouse and dependent children). The form also requests information on considerations that might affect a candidate's objectivity, including previous involvement (e.g., as an author or reviewer) with the EPA document to be reviewed, or public statements on the issue under consideration by the SAB. If a candidate to serve on an SAB/CASAC panel is a regular government employee at another federal agency, ethics information is obtained using the OGE Form 450 or OGE Form 278e, as appropriate.

The review of conflicts will occur when a specific project is brought for review to the SAB. Additional information will be collected and a determination of whether conflicts exist will be made at that time. If conflicts are found, then members may be asked to recuse themselves from a portion of a review or the entire review depending on the nature of the conflict.

At the EPA, SGEs typically are not high-level officials required to file public financial disclosure documents. Instead, they file a confidential financial disclosure form 3110-48, which is an approved alternative version of the confidential financial disclosure report, the OGE-450. As set forth in the Ethics in Government Act of 1978, an agency may require information to be reported on a confidential form that is “more extensive [than that requested of public filers]” (5 U.S.C. app § 107(a)(1)). Under this authority, the EPA requires that the SGEs disclose even more information than is required of regular government employees, whether those employees file the confidential OGE-450 or the public OGE-278e. For example, SGEs report specifics about their and their spouse’s research support and project funding and describe any public statements they have made related to the issue under consideration.

Although 18 U.S.C. 208 (b)(3) allows the Agency, in consultation with the Office of Government Ethics (OGE), to issue individual waivers to SGEs under certain conditions, the SAB Staff Office has not requested that the EPA Office of General Counsel issue such waivers in recent years given available regulatory exemptions. For example, C.F.R. 2640.203(g) provides an exemption that allows SGEs serving on FACA committees to participate in particular matters of general applicability (e.g., providing advice on the development of general regulations, policies or standards) where the disqualifying interest arises from the SGE’s non-federal employment. The exemption is subject to several important limitations (e.g., it does not cover interests arising from the SGE’s ownership of stock and the matter cannot have a special or distinct effect on either the SGE or the SGE’s non-Federal employer, other than as part of a class).

5. *Are any appointees EPA grant holders? Were EPA grant holders considered for appointments, in light of the court ruling that the prohibition of EPA grant holders from advisory boards was illegal?*

RESPONSE: An extension to the nomination period was provided after the court ruling. A *Federal Register* Notice was published on August 14, 2020, extending the nomination period and providing an additional 2-week period to submit additional nominations of experts to serve on the Chartered SAB and its four standing committees, including anyone that may be an EPA grant holder. During the first nomination period, a total of 130 nominations were received. During the nomination extension period, 28 additional nominations were received. After the court ruling, nominees were not asked to indicate if they held EPA grants by the SAB Staff Office.

6. *What are the responsibilities of the Vice Chair position?*

RESPONSE: The primary responsibility of the Vice Chair is to assist the Chair in fulfilling his/her duties. Moreover, the role is clearly noted in the 2003 SAB Implementation Plan ([https://yosemite.epa.gov/Sab/Sabproduct.nsf/WebFiles/ImplementReorgSAB/\\$File/sab04002.pdf](https://yosemite.epa.gov/Sab/Sabproduct.nsf/WebFiles/ImplementReorgSAB/$File/sab04002.pdf)). The Vice Chair would act as chair of a Quality Review panel when panel reports are submitted to the Chartered SAB for final approval before transmittal to the EPA Administrator. Today, this position will do the same and assist the Chairman and help provide for orderly proceedings of the SAB.